

November 1, 2019

Via Email Only

## Ontario Operational and Developmental First Nations

Chippewas of Kettle and Stony Point First Nation  
Chippewas of the Thames First Nation  
Alderville First Nation  
Beausoleil First Nation  
Mississauga First Nation  
Nipissing First Nation  
Wiikwemikoong Unceded Territory  
Long Lake #58 First Nation

Atikamaksheng Anishinabek  
Henvey Inlet First Nation  
Chippewas of Georgina Island First Nation  
Mississaugas of Scugog  
Shesheganing First Nation  
Garden River First Nation  
Wasauksing First Nation

Dokis First Nation  
Magnetawan First Nation  
Algonquins of Pikwaknagan  
Moose Deer Point First Nation  
M'Chigeeng First Nation  
Serpent River First Nation  
Fort William First Nation

Dear Chiefs, Council and Land Managers

**Re: Anishinabek Nation Governance Agreement (ANGA)**

We write to you regarding the most recent version of the ANGA, particularly from the perspective of your ratified, or soon to be ratified land code and the potential for conflict. We bring the below noted sections of the ANGA to your attention. While we do have concerns, we would be happy to assist in the support of the development of the ANGA as it relates to the Framework Agreement on First Nation Land Management (FA). The following are our comments:

1. References to the FNLMA (10.12 & 10.13) are somewhat vague since the first speaks only of FNs that have a land code in force, leaving open a possible interpretation that the FNLMA will not continue to apply to developmental FNs, which would be disruptive to say the least. On the other hand, it may open the door for an argument that even if the FNLMA does not apply, the FA does. Even so, it is the drafting that in our opinion creates confusion, which seems to be based on an imperfect or unstudied appreciation of the FA process.
2. We can think of no reason why a land code FN would subordinate their FA (not FNLMA) to the ANGA. For one thing, the ANGA makes no provision for governance of land, resources or the environment (pursuant to 13.1 these are potential subjects for future negotiation). At present, we see no immediate effect of the "conflict" clause (10.13) insofar as these principal objects of the FA are concerned.
3. The same cannot be said for incidental, and possibly unintended, effects. An example of a conflict might be the fact that, under the FA, FNs can appoint a justice of the peace (JP). There is no such provision in the ANGA. Does that mean that a FN can still appoint a JP since the ANGA is silent on the point, so there is no operational conflict? Or does the fact that jurisdiction over FN offences is given to the Ontario Court of Justice (6.13) mean that no other court or FN entity -- specifically a FA JP -- can have jurisdiction to adjudicate offences under FN laws?
4. Does 6.14, which speaks to 'subject matter jurisdiction' add certainty or create potential confusion for enforcement efforts?

5. Generally, the ANGA does not advance the issue of enforcement in any way that could be considered an improvement over the FA; in fact, the monetary limit on fines (6.5) sets a lower standard than the FA, especially in terms of the limits being considered for sanction under FN environmental laws. Would a land code FN with an environmental law prescribing fines up to \$100K, for example, be in conflict with the limit imposed by the ANGA? Can it be bound by both the FA and the ANGA?
6. Another concern we have relates to federal ratification of the ANGA, which contemplates federal legislation to implement the agreement. Will the feds, who are not obligated to legislate in a manner consistent with the agreement (which is an obligation in the FA), attempt the same counterproductive process of enacting legislation that repeats the agreement in a manner preferred by the Federal Department of Justice? (see also 14.3(b) and 15.18). As you may be aware, this approach has created many unnecessary complications in the implementation of the FA over the past 20 years. Accordingly, the LAB is seeking Canada's concurrence to replace the FNLMA with a much shorter piece of ratifying legislation that doesn't repeat or omit the already agreed to content contained in the FA. We will be pursuing this with the newly elected Federal government.

These are just a few of the points we have noted while reading the ANGA. There are many others of perhaps lesser or different concern for FA Anishinabek FNs as they consider whether to ratify the ANGA. What we perceive in terms of the FA is an effort to address, in some way, the fact that in total, 19 Anishinabek FNs have already ratified the FA and another 19 FNs are signatory to the FA and but have not yet ratified it. As of today's date the Anishinabek governance vote website lists 26 First Nations with BCRs supporting ANGA, 14 of those First Nations are signatory to the FA, 11 have ratified, 3 have not.

In conclusion, it is our inclination to preserve the hard fought, established and successful lands and resources governance option created by the Framework Agreement on First Nation Land Management. We trust and hope you would agree with our position on this matter. Please do not hesitate to contact us if you think we can be of assistance in the development of ANGA.

Sincerely,



Robert Louie, Chairman  
Lands Advisory Board



Austin Bear, Chairman  
First Nations Land Management Resource Centre